



## MONTGOMERY COUNTY ETHICS COMMISSION

Rahul K. Goel  
*Chair*

Steven Rosen  
*Vice Chair*

**May 8, 2019**

### **Advisory Opinion 19-04-009**

You have requested an advisory opinion concerning the scope of a condition that has been placed on your approved outside employment. You ask whether you can provide couple's therapy in your outside position to a couple where one of the persons to receive the therapy is an individual you provided services to at the Department of Health and Human Services (DHHS). The Ethics Commission declines to authorize you to provide the couple's therapy for the reasons discussed below. In so deciding, the Ethics Commission agrees with the position of DHHS that you may not represent a client you had in your official capacity until at least six years have passed since services were provided to the client at DHHS.

You are a part-time Therapist II employed by the Department of Health and Human Services, Adult Behavioral Services. On September 16, 2015, the Ethics Commission approved your outside employment request to work as an independent mental health provider. Your request for outside employment was recommended by your employing agency for approval, with the additional recommendation "that [you] do[...] not serve HHS clients in [your] private practice." The Ethics Commission imposed the following condition on your outside employment: "Employee may not provide services of any type to clients of Montgomery County DHHS or make referrals to her outside business while working in her official capacity as a county employee." This approval expired on September 16, 2018.

You submitted a new request for outside employment as therapist on March 29, 2019. This request for outside employment was recommended by DHHS. On April 4, 2019, the Ethics Commission approved your request with the following condition: "In this outside employment activity, you may not provide services to anyone who you are providing services to or have provided services to as a County employee or who is or has been a client of your program/unit at DHHS, and you may not as a County employee make referrals to the outside business or solicit other County employees to make such referrals." The Commission notes that this condition on the outside employment is intended to ensure that County employees engaged in outside employment that is related to their County employment avoid the use and the appearance of use of their County employment to advance their private business activities.

You contacted the Ethics Commission staff office on April 9, 2019, regarding a question you had concerning the scope of the condition on your outside employment. You stated that you had

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recently been contacted to provide services in your private capacity by a former client of yours at DHHS. This person had last received services from the County just over four years ago. You indicated that the nature of the services this person was seeking from you were different from the services that you provided to the client when she was receiving services from the County. When the individual was receiving services from the County, the services involved individual therapy. In the intervening period since you had last provided services, the individual had gotten married and had children. She was looking for a couple's therapist. You inquire whether the condition placed on your outside employment prohibits your provision of services to the couple.

When asked to consider your inquiry, DHHS indicated that it would be opposed to the Ethics Commission granting permission for a therapist to provide counseling services to a former client if the date of last service with DHHS is six years or less. The rationale for DHHS's position is that client records are required to be retained for 6 years from the last date of service. After the expiration of six years, it is appropriate to consider that a person who had received services from the department is no longer a client of the Department. Accordingly, the Ethics Commission believes that the condition imposed on serving DHHS clients should last for six years after the last provision of services by the employee's division at DHHS.

The Ethics Commission, therefore, advises you that you must discontinue any private provision of services that you are engaging in for this former client of DHHS. Please notify Robert Cobb, Chief Counsel, when you are in compliance with the requirements imposed by this advice.

For the Commission



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Rahul K. Goel